



Roger Knapman MEP
ASP 03F258
European Parliament
Rue Wiertz
1047 Brussels

19 December 2006

Dear Mr Knapman,

Subject: Complaint to EPACA.

I am writing to inform you of the EPACA response to your complaint letter of 17 November.

1. The complaint is that Kern European Affairs, in producing a report for the Legal Affairs Committee of the European Parliament on 'the Collective Management of Rights in Europe' in July 2006, failed
'to mention the close relationship between [the principals of KEA] and [the industry trade association] IMPALA'
and that this constitutes a direct breach of the EPACA Code of Conduct obligation on members to
'declare the interest represented in their dealings with EU institutions'
2. At a special meeting on 6 December 2006, and with the company complained against excluded from the discussions (as required by our rules), the Management Committee concluded that there is no case to answer, for the following reasons:
 - a. The issue of transparency in this case is very similar to that already addressed in an earlier complaint (see letter to Kathy Sinnott MEP dated 10 November available on www.epaca.org).
 - b. The act criticized – the circulation of a report without information about the background and connections of the author – was not an act carried out by KEA. The report by KEA was commissioned and circulated by the services of the European Parliament. All reports prepared for Parliament by outside experts are circulated by Parliament with similar or less information about the authors.



- c. KEA and its principals set out prominently in the tender document and CVs of Mr Kern and Ms Smith the business relationship with IMPALA and other clients who are active in the sector. It is clear that Parliament selected KEA for this task in knowledge of these connections. This is a decision of Parliament which it is not for us to challenge.
- d. The claim in the letter of complaint that the report contains 13 references to IMPALA is misleading, since the report evidently sets out the views of numerous interested parties (there are for example 15 references to IFPI and GEMA, 11 to MCPS, 10 to EDIMA, 9 to RTL and GESAC, and 6 to AEPO/ARTIS).
- e. Philippe Kern acting of behalf of KEA signed a declaration of impartiality when submitting the tender application. Parliament accepted this declaration in full knowledge of his business relationships.

The Management Committee therefore concluded that there was no basis for convening a Disciplinary Panel to review the complaint, as no case that an EPACA member breached the EPACA Code has been presented, and the complaint should therefore be rejected immediately.

However, the Management Committee also noted, as on a previous occasion, that Parliament may wish to reflect on whether MEPs would prefer that fuller details of the background of authors are circulated with the reports of outside experts, to further limit scope for any complaint, whether genuine or frivolous, that not enough was known about them. This is also however a decision for Parliament.

The Management Committee further concluded that as this and the previous complaint both relate to the same issue – the handling of relations between consultants and EU institutions when the former are supplying services to those institutions – this is a matter which EPACA should seek as a priority to discuss with the relevant institutions. This relates not only to enhancements of transparency practices (such as the one mentioned above), but also to clearer ground-rules on conflict of interest. Establishing such ground-rules will both clarify for service suppliers any existing uncertainties on these matters, but also limit the scope for mischievous misrepresentation of the decisions of the institutions and their relationships with suppliers.

In this case, without prejudice to the above conclusions, the Management Committee also found it appropriate to draw the attention of KEA to best practices in the relevant areas.



We are communicating this finding to you as complainant, to our Professional Practices Panel, to all our Members, to the Chair and Head of Secretariat of the Legal Affairs Committee, the Secretary General of Parliament, and the European Commission.

We will shortly also place it on our website.

Yours sincerely,

John Houston
Chairman